

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RAMON MARTINEZ,

Plaintiff,

v.

9:15-CV-1428  
(MAD/ATB)

OFFICER MORTON,

Defendant.

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APPEARANCES:

RAMON MARTINEZ  
97-A-0090  
Plaintiff, pro se  
Mid-State Correctional Facility  
P.O. Box 2500  
Marcy, NY 13403

ANDREW T. BAXTER  
United States Magistrate Judge

**DECISION and ORDER**

The Clerk has sent to the Court for review a complaint brought pursuant to 42 U.S.C. § 1983 by pro se plaintiff Ramon Martinez. Dkt. No. 1 ("Compl."). Plaintiff, who is incarcerated at Mid-State Correctional Facility, has paid the filing fee for this action.<sup>1</sup>

In his complaint, plaintiff asserts a claim arising out of his confinement at Mid-State Correctional Facility. See *generally* Compl. Construed liberally, plaintiff alleges that defendant Morton subjected him to excessive force in violation of the Eighth Amendment to

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<sup>1</sup> When plaintiff submitted his complaint, he also filed an application to proceed in forma pauperis ("IFP Application"). See Dkt. No. 2. By Order of United States District Judge Mae A. D'Agostino, plaintiff's IFP Application was denied as incomplete, and plaintiff was provided an opportunity to submit a renewed IFP Application or to pay the full filing fee. Dkt. No. 4. Rather than submitting a renewed IFP Application, plaintiff paid the full filing fee of \$400.00. Dkt. No. 5.

the United States Constitution. *Id.* Plaintiff seeks an award of compensatory damages.<sup>2</sup> *Id.* at 6. For a complete statement of plaintiff's claims, reference is made to the complaint.

Mindful of the Second Circuit's instruction that a pro se plaintiff's pleadings must be liberally construed, see, e.g., *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 191 (2d Cir. 2008), the Court will require a response to plaintiff's complaint. In so ruling, the Court expresses no opinion as to whether plaintiff's claims can withstand a properly filed motion to dismiss or for summary judgment.

**WHEREFORE**, it is hereby

**ORDERED** the Clerk shall issue a summons and forward it to plaintiff. It is plaintiff's responsibility to immediately serve the named defendant with a summons and a copy of his complaint in accordance with the Federal Rules of Civil Procedure.<sup>3</sup> The Clerk shall forward a copy of the summons and complaint by mail to the Office of the New York State Attorney General, together with a copy of this Decision and Order; and it is

**ORDERED** that a response to the complaint be filed by the defendant, or his counsel, as provided for in the Federal Rules of Civil Procedure; and it is

**ORDERED** that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7<sup>th</sup> Floor,

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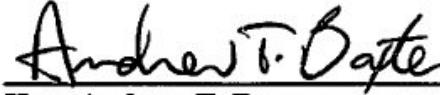
<sup>2</sup> While plaintiff states that defendant is sued his individual and official capacity, Compl. at 1, the Eleventh Amendment to the U.S. Constitution bars claims for damages against state officials acting in their official capacities. See *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

<sup>3</sup> Because plaintiff is not proceeding in forma pauperis, he is responsible for serving the defendant. Although plaintiff has already paid the filing fee in full, he may still apply for in forma pauperis status, which affords plaintiff other benefits apart from deferring full payment of the filing fee. For example, where a plaintiff is granted in forma pauperis status, he may apply for court appointed counsel. Additionally, the U.S. Marshals Service is appointed to effect service of process of the summons and complaint on behalf of a plaintiff proceeding IFP. See Fed. R. Civ. Pro. 4(c)(2) (Marshals Service must be appointed to serve process when plaintiff is authorized to proceed in forma pauperis); 28 U.S.C. § 1915(d) ("the officers of the court shall issue and serve all process and perform all duties in [in forma pauperis] cases").

Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court. Plaintiff is required to promptly notify the Clerk's Office and all parties or their counsel of any change in his address; plaintiff's failure to do so may result in the dismissal of this action; and it is further

**ORDERED** that the Clerk serve a copy of this Decision and Order on plaintiff.

Dated: January 14, 2016

  
Andrew T. Baxter  
Hon. Andrew T. Baxter  
U.S. Magistrate Judge